

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA**

David Antonio Little, Jr.,

Plaintiff,

v.

Correctional Officer Bostic; Correctional
Officer Spivey

Defendant.

Case No. 0:23-cv-1538-RMG

ORDER

This matter is before the Court on the Magistrate Judge’s Report and Recommendation (“R & R”), recommending the Court deny Plaintiff’s motion for temporary restraining order and preliminary injunction. (Dkt. No. 162). Plaintiff has not filed an objection. For the reasons set forth below, the Court adopts the R & R as the order of the Court and denies Plaintiff’s motion.

Plaintiff, a state prisoner proceeding pro se and *in forma pauperis*, brings this action pursuant to 42 U.S.C. § 1983. Pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(e) DSC, this case was assigned to a Magistrate Judge for all pretrial proceedings.

Plaintiff filed a motion for preliminary injunction and temporary restraining order arguing that he has been denied access to legal materials and the law library at the Kershaw Correctional Institution and that legal mail is distributed to him only once a week. (Dkt. No. 85). The Magistrate Judge then issued the present R & R recommending the Court deny the motion. (Dkt. No. 162). Plaintiff did not file objections to the R & R.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270–71, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). This Court is charged with making a de novo determination of those portions of the R & R to which

specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1), This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

After review of the record and the R & R, the Court finds that the Magistrate Judge applied sound legal principles to the facts of this case and therefore agrees with and adopts the R & R as the order of the Court. A plaintiff seeking a temporary restraining order or preliminary injunction must establish all four of the following elements: (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tip in his factor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Court agrees with the Magistrate Judge that Plaintiff has failed to satisfy the heavy burden required to obtain preliminary injunctive relief. Particularly, the Court agrees that Plaintiff has failed to establish that he is likely to succeed on the merits because the individuals he complains of in his motion are not defendants in this matter, making relief against the individuals unavailable.

For the reasons set forth above, the Court agrees with and adopts the R & R (Dkt. No. 162) as the order of the Court. Accordingly, Plaintiff's motion (Dkt. No. 85) is denied.

s/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

July 8, 2024
Charleston, South Carolina